

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-06-SE-317
Lockheed Martin Corporation)	NAL/Acct. No. 200732100015
Clarksburg, Maryland)	FRN # 0014357743
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 28, 2007

Released: March 2, 2007

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Lockheed Martin Corporation ("Lockheed Martin"), licensee of satellite earth station, call sign E970322, Clarksburg, Maryland, apparently liable for forfeiture in the amount of eight thousand dollars (\$8,000) for operating its earth station without Commission authorization. Lockheed Martin acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, ("Act")¹ and Section 25.102(a) of the Commission's Rules ("Rules").²

II. BACKGROUND

2. On January 20, 2006, Lockheed Martin filed a request for special temporary authority ("STA") to operate its earth station, call sign E970322, with the Inmarsat-3 (F4) satellite located at 54° W.L. during the westward drift of the satellite to a new location at 142° W.L. pending grant of Lockheed Martin's then to-be-filed modification of license application to include the Inmarsat-3 satellite at 142° W.L. as a point of communication.³ The International Bureau granted Lockheed Martin's STA request on February 1, 2006 for sixty days to be effective from February 3, 2006 through April 3, 2006.⁴ Having determined on June 7, 2006 that the STA expired on April 3, 2006, Lockheed Martin's counsel filed a second STA request on June 8, 2006. In that STA request, Lockheed Martin requested a 60 day extension of the already expired first STA and also sought to have the new STA effective from April 3, 2006, the expiration date of the first STA. On July 3, 2006, the International Bureau granted Lockheed Martin's second STA request, to be effective from June 18, 2006 through October 18, 2006.⁵

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 25.102(a).

³ Lockheed Martin filed an application for license modification for earth station E970322 on June 15, 2006, File No. SES-MFS-2006-0615-01010. The application was accepted for filing on August 9, 2006.

⁴ See File No. SES-STA-20060120-00074 (granted February 1, 2006).

⁵ See File No. SES-STA-20060608-00950 (granted July 3, 2006). The STA was granted without prejudice to any future FCC enforcement action against Lockheed Martin in connection with any unauthorized operation of its radio facilities.

3. Because it appeared that Lockheed Martin may have operated the earth station without authority from April 4, 2006 through June 7, 2006 after the expiration of its STA, the International Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action. On October 11, 2006, the Enforcement Bureau's Spectrum Enforcement Division issued a letter of inquiry ("LOI") to Lockheed Martin.⁶

4. In its November 13, 2006 response to the LOI,⁷ Lockheed Martin states that it first became aware on June 7, 2006 that its license for earth station E970322 had expired.⁸ Lockheed Martin acknowledges that it operated earth station E970322 on a constant and regular basis between and including April 4, 2006 and June 7, 2006.⁹ Lockheed Martin emphasizes that throughout that time period it held a valid license for the Clarksburg earth station that included the Immarsat-3 F4 satellite.¹⁰ Lockheed Martin states that, through an oversight by its counsel, the initial STA was recorded on an internal tickler as a 180 day STA, rather than a 60 day STA.¹¹ For this reason, it states that its counsel failed to prepare a timely filed request for extension of the STA.¹² Further, Lockheed Martin requests that the error be treated as minor in light of its mitigation plan, its extended history as an FCC licensee, and given its prompt, direct, and voluntary disclosure to the Commission.¹³

III. DISCUSSION

5. Section 301 of the Act and Section 25.102(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by an earth station except under, and in accordance with a Commission granted authorization.

6. As a Commission licensee, Lockheed Martin was required to timely renew its STA to allow its earth station to continue to communicate with the Inmarsat-3 F4 satellite at 142° W.L., which is beyond the parameters of the station's authorization. Lockheed Martin concedes that it operated earth station E970322 without Commission authorization constantly and regularly from April 4, 2006 through June 7, 2006. By operating its earth station without authorization, Lockheed Martin apparently violated Section 301 of the Act and Section 25.102(a) of the Rules.

7. Section 503(b) of the Act,¹⁴ and Section 1.80(a) of the Rules,¹⁵ provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a

⁶ Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, to Lockheed Martin Corporation (October 11, 2006).

⁷ See Letter from Lockheed Martin Corporation to Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau (November 13, 2006) ("LOI Response").

⁸ *Id.* at 2.

⁹ *Id.* at 4.

¹⁰ *Id.* at 1.

¹¹ *Id.* at Attachment C, Application for Earth Station Special Temporary Authority.

¹² *Id.*

¹³ *Id.* at 5.

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 C.F.R. § 1.80(a).

forfeiture penalty. For purposes of Section 503(b) of the Act, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission’s rules, and “repeatedly” means more than once.¹⁶ Based upon the record before us, it appears that Lockheed Martin’s violations of Section 301 of the Act and Section 25.102(a) of the Rules were willful and repeated.

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(D) of the Act directs us to consider factors, such as “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁷ Having considered the statutory factors, as explained below, we propose a forfeiture of \$8,000.

9. Section 1.80(b) of the Rules sets a base forfeiture amount of \$10,000 for operation of a station without Commission authority.¹⁸ We propose a forfeiture in the amount of \$5,000 for Lockheed Martin’s unauthorized operation of its earth station E970322. In proposing this forfeiture amount, we recognize that the Commission considers a licensee who operates a station with an expired authorization in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjust the \$10,000 base forfeiture amount accordingly.¹⁹ We also recognize that Lockheed Martin’s unauthorized operation of earth station E970322 was for a relatively short duration, approximately two and a half months.

10. This \$5,000 base forfeiture amount is subject to adjustment, however. In this regard, we consider Lockheed Martin’s size and ability to pay a forfeiture.²⁰ To ensure that forfeiture liability is a deterrent, and not simply a cost of doing business, the Commission has determined that large or highly profitable companies, such as Lockheed Martin, could expect the assessment of higher forfeitures for violations.²¹ Given Lockheed Martin’s size and ability to pay a forfeiture, we conclude that an upward adjustment of the base forfeiture amount to \$10,000 is appropriate.

11. Lockheed Martin asserts that its unauthorized operation of earth station E970322 was caused by administrative oversight. Such administrative oversight or inadvertence does not, however,

¹⁶ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991) (“*Southern California*”); see also *WCS Communications, Inc.*, Notice of Apparent Liability, 13 FCC Rcd 6691 (WTB, Enf. and Consumer Info. Div., 1998) (finding that a licensee’s inadvertent failure to file timely renewal applications constitutes a repeated violation that continues until the date the license is renewed).

¹⁷ 47 U.S.C. § 503(b)(2)(D). See also *Forfeiture Policy Statement*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied* (1999).

¹⁸ 47 C.F.R. 1.80(b).

¹⁹ See *Discussion Radio Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7438 (2004) (assessing a proposed \$5,000 forfeiture for operating a station for 14 months beyond the expiration of its license); see also *Gilmore Broadcasting Corp.*, Notice of Apparent Liability, 21 FCC Rcd 6284, 6286-87 (Enf. Bur., Spectrum Enf. Div., 2006); *Criswell College*, Notice of Apparent Liability, 21 FCC Rcd 5106, 5109 (Enf. Bur., Spectrum Enf. Div., 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability, 21 FCC Rcd 3922, 3925 (Enf. Bur., Spectrum Enf. Div., 2006) (“*NWN*”); *Journal Broadcast Corporation*, Notice of Apparent Liability, 20 FCC Rcd 18211, 18213 (Enf. Bur., Spectrum Enf. Div., 2005); *Shared Data Networks, LLC*, Notice of Apparent Liability, 20 FCC Rcd 18184, 18187 (Enf. Bur., Spectrum Enf. Div., 2005).

²⁰ Lockheed Martin recently reported its net sales for 2006 as \$39.6 billion. See Press Release, *Lockheed Martin Announces 2006 Fourth Quarter and Year-End Results* (January 25, 2007).

²¹ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100.

mitigate its violations.²² As a Commission licensee, Lockheed Martin is charged with the responsibility of knowing and complying with the terms of its authorizations (including STAs), the Act and the Rules. Lockheed Martin further asserts that there was no technical affect of its not renewing its STA and thereby operating beyond the authority granted in its license, as there was little or no prospect that such operation would cause interference to Commission licensees on the 6 GHz band frequencies on which the earth station transmitted. It is well established that the absence of public harm is not considered a mitigating factor of a rule violation.²³ We do find, however, that a downward adjustment of the proposed forfeiture from \$10,000 to \$8,000 is warranted because Lockheed Martin made voluntary disclosures to Commission staff and undertook corrective measures after learning of its violations, *but* prior to any Commission inquiry or initiation of enforcement action.²⁴

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²⁵ and Sections 0.111, 0.311 and 1.80 of the Rules,²⁶ Lockheed Martin **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of eight thousand dollars (\$8,000) for the willful and repeated violation of Section 301 of the Act and Section 25.102(a) of the Rules.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²⁷ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Lockheed Martin **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. A request for full payment under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington,

²² See *Southern California*, 6 FCC Rcd at 4387 (stating that “inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”).

²³ *Pacific Western Broadcasters, Inc.*, Memorandum Opinion and Order, 50 FCC 2d 819 (1975) (rejecting a broadcaster’s claim that the forfeiture should be downwardly adjusted because its operations at excessive power levels did not cause public harm or complaint, stating that “[t]he Commission not only is concerned with actual interference, but is concerned with the potential for interference”); *NWN*, 21 FCC Rcd at 3927 (rejecting a licensee’s claim that the forfeiture should be downwardly adjusted because its operation of an unauthorized earth station did not cause interference or disrupt other users); *AGM-Nevada, LLC*, Forfeiture Order, 18 FCC Rcd 1476, 1478-79 (Enf. Bur. 2003) (rejecting a licensee’s claim that the forfeiture should be downwardly adjusted because even though it operated booster stations at unauthorized sites with excessive power levels, its operations did not result in interference).

²⁴ See *Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur., 2004).

²⁵ 47 U.S.C. § 503(b).

²⁶ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

²⁷ 47 C.F.R. § 1.80.

D.C. 20554.²⁸

15. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Lockheed Martin Corporation, Attn: Jennifer A. Warren, Senior Director, Trade and Regulatory Affairs, 1550 Crystal Drive, Suite 300, Arlington, VA 22202.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

²⁸ See 47 C.F.R. § 1.1914.